

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

BILLY DON MASK, #1438762

VS.

JUDGE RAYBURN NALL, et al.

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CIVIL ACTION NO. 4:15cv735

ORDER OF DISMISSAL

This civil action was referred to United States Magistrate Judge Christine A. Nowak, who issued a Report and Recommendation concluding that the complaint should be dismissed with prejudice pursuant to 28 U.S.C. § 1915A(b)(1) (dkt #13). Plaintiff filed objections.

Plaintiff reasserts the issues raised in his complaint and also complains that *Heck* does not apply to his case. *Heck v. Humphrey*, 512 U.S. 477, 486-87, 114 S. Ct. 2364, 2372, 129 L. Ed.2d 383 (1994). As the United States Magistrate Judge noted, a finding that the Defendants aided each other in allowing an unconstitutional impaneling of a grand jury to indict Plaintiff using “evidence of unsupported facts,” would necessarily imply the invalidity of his conviction. *Id.* Additionally, a finding that the indictment is fraudulent and obtained without the due course of law would necessarily imply the invalidity of his conviction. *Id.* *Heck* applies to this case, but Plaintiff fails to show that his conviction or sentence has been reversed, expunged, invalidated, or otherwise called into question. *Id.* Plaintiff also fails to show that Judge Nall and Assistant District Attorney Jodi Brown are not immune from liability. *Boyd v. Biggers*, 31 F.3d 279, 284-85 (5th Cir. 1994) (claims against defendants with absolute immunity, such as judges and prosecutors, should be dismissed with prejudice).

In conclusion, the Report of the Magistrate Judge, which contains proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration. Having made a *de novo* review of the objections raised by Plaintiff to the Report, the court concludes that the findings and conclusions of the Magistrate Judge are correct, and adopts the same as the findings and conclusions of the court. It is accordingly

ORDERED that the claims against all Defendants are **DISMISSED** with prejudice to their being asserted again until the *Heck* conditions are met. Plaintiff's objections are **OVERRULED**. All motions by either party not previously ruled on are hereby **DENIED**.

SIGNED this 6th day of May, 2016.


AMOS L. MAZZANT
UNITED STATES DISTRICT JUDGE